

# Habitat Conservation Planning Handbook

## Table of Contents

<b>Executive Summary</b> .....	i
<b>List of Acronyms</b> .....	ii

### Chapter 1: Introduction

<b>1.1 Purpose of the HCP Program</b> .....	1-1
<b>1.2 Evolution of the HCP Program</b> .....	1-3
1.2.1 <i>Added Regulations and Policies</i> .....	1-3
1.2.2 <i>Successes of the HCP Program</i> .....	1-4
1.2.3 <i>Lessons Learned</i> .....	1-5
<b>1.3 Laws and Other Requirements Related to the HCP Program</b> .....	1-6
1.3.1 <i>Relationship and Hierarchy</i> .....	1-6
1.3.2 <i>Endangered Species Act</i> .....	1-7
1.3.3 <i>National Environmental Policy Act</i> .....	1-10
1.3.4 <i>National Historic Preservation Act</i> .....	1-10
1.3.5 <i>Administrative Procedure Act</i> .....	1-11
1.3.6 <i>Tribal Consultation and the ESA</i> .....	1-11
1.3.7 <i>Other Related Process Laws</i> .....	1-12
1.3.8 <i>A List of Related Natural Resource Laws</i> .....	1-12
<b>1.4 How to Use the HCP Handbook</b> .....	1-13
1.4.1 <i>Purpose of the Handbook</i> .....	1-13
1.4.2 <i>Organization of the Handbook</i> .....	1-13
1.4.3 <i>Tips for Using the HCP Handbook</i> .....	1-14

### Chapter 2: Overview of the HCP Planning Process

<b>2.1 Phases of HCP Planning</b> .....	2-1
<b>2.2 Considerations for Successful HCP Planning</b> .....	2-3
2.2.1 <i>Understanding the Regulations</i> .....	2-3
2.2.2 <i>Innovation Considerations</i> .....	2-3
2.2.3 <i>Going Fast by Starting Slowly</i> .....	2-4
2.2.4 <i>Partnerships, Collaboration, and Communication</i> .....	2-5
2.2.5 <i>State and Local Coordination</i> .....	2-5
2.2.6 <i>Good Communication</i> .....	2-6
2.2.7 <i>Well-Written Documents</i> .....	2-6
<b>2.3 Tips for Success</b> .....	2-7
<b>2.4 Factors Influencing How Long the Process Takes</b> .....	2-9
<b>2.5 Roles and Responsibilities</b> .....	2-12
2.5.1 <i>Applicant</i> .....	2-13
2.5.1.1 <i>Consultants and Contractors</i> .....	2-13

2.5.2	<i>Services</i> .....	2-14
2.5.2.1	<i>Field Offices</i> .....	2-14
2.5.2.2	<i>Regional Offices</i> .....	2-17
2.5.2.3	<i>Headquarters</i> .....	2-18
2.5.2.4	<i>Legal Counsels</i> .....	2-20

**PHASE 1: Pre-Application**

**Chapter 3: Getting Started**

<b>3.0</b>	<b>Introduction</b> .....	3-2
<b>3.1</b>	<b>When Are an HCP and an Incidental Take Permit Needed?</b> .....	3-2
3.1.1	<i>What is Incidental Take?</i> .....	3-2
3.1.2	<i>When to Seek an Incidental Take Permit and Develop an HCP?</i> .....	3-2
3.1.3	<i>Considerations for Special Rules under Sections 4(d) and 10(j)</i> .....	3-4
<b>3.2</b>	<b>Avoiding Take and Avoiding the Need for an Incidental Take Permit</b> .....	3-5
<b>3.3</b>	<b>Who Can Apply for an Incidental Take Permit?</b> .....	3-5
<b>3.4</b>	<b>What Types of HCPs and Incidental Take Permits Are Possible?</b> .....	3-6
3.4.1	<i>Single Applicant</i> .....	3-10
3.4.2	<i>Programmatic Plans</i> .....	3-10
3.4.2.1	<i>Challenges, Details, and Opportunities with Programmatic Plans</i> .....	3-11
3.4.3	<i>General Conservation Plans</i> .....	3-13
3.4.3.1	<i>Challenges, Details, and Opportunities with General Conservation Plans</i> .....	3-13
3.4.4	<i>Plan Variations, Multiple Projects, or More Than One Applicant</i> .....	3-14
3.4.5	<i>Combined Section 10 Plans</i> .....	3-15
3.4.6	<i>Integrated Plans</i> .....	3-16
3.4.7	<i>Permit Severability and Implementation Oversight of Programmatic Enrollees</i> .....	3-17
<b>3.5</b>	<b>What Types of Activities Can Be Covered in an HCP?</b> .....	3-18
3.5.1	<i>Otherwise Lawful</i> .....	3-18
3.5.2	<i>Enhancement of Survival Permits Do Not Substitute for an HCP</i> .....	3-19
3.5.3	<i>Accommodating State Requirements</i> .....	3-21
3.5.4	<i>Section 7 Programmatic Consultations</i> .....	3-21
3.5.5	<i>Research or Recovery Permits</i> .....	3-21
3.5.6	<i>No Temporary Authorization of Incidental Take</i> .....	3-21
3.5.7	<i>Advance Mitigation</i> .....	3-22
<b>3.6</b>	<b>Going Fast by Starting Slow</b> .....	3-23
<b>3.7</b>	<b>Other Compliance Requirements</b> .....	3-27
3.7.1	<i>Section 7 Intra-Service Consultation</i> .....	3-27
3.7.2	<i>Listed Plants and Critical Habitat</i> .....	3-28
3.7.3	<i>Migratory Birds and Eagles</i> .....	3-28
3.7.4	<i>National Historic Preservation Act</i> .....	3-28
3.7.5	<i>National Environmental Policy Act</i> .....	3-29

<b>3.8</b>	<b>Contracted Assistance</b> .....	3-30
	3.8.1 <i>Facilitators</i> .....	3-30
	3.8.2 <i>HCP and NEPA Consultants</i> .....	3-31
	3.8.3 <i>Advice to Applicants on Selecting an HCP Consultant</i> .....	3-32
<b>3.9</b>	<b>Planning Resources Available</b> .....	3-33
<b>3.10</b>	<b>Making and Documenting Decisions</b> .....	3-34

## **Chapter 4: Communicating and Coordinating**

<b>4.0</b>	<b>Effective Communication</b> .....	4-1
<b>4.1</b>	<b>Identify Stakeholders</b> .....	4-2
	4.1.1 <i>National Marine Fisheries Service (NMFS)/U.S. Fish and Wildlife Service (FWS)</i> .....	4-3
	4.1.2 <i>Other Federal Agencies</i> .....	4-4
	4.1.3 <i>Federally Recognized Tribes</i> .....	4-4
	4.1.4 <i>State Agencies</i> .....	4-5
	4.1.5 <i>Federally-Elected Officials</i> .....	4-5
<b>4.2</b>	<b>Establish Communication Objectives</b> .....	4-6
<b>4.3</b>	<b>Messaging and Channels</b> .....	4-10
	4.3.1 <i>Written Media</i> .....	4-11
	4.3.2 <i>Personal Contact with Stakeholders</i> .....	4-11
	4.3.3 <i>Public Comments</i> .....	4-12
	4.3.4 <i>Public Meetings</i> .....	4-12
	4.3.5 <i>Public Hearings</i> .....	4-12
	4.3.6 <i>Focus Groups</i> .....	4-12
	4.3.7 <i>Nominal Group Process</i> .....	4-12
	4.3.8 <i>Workshops and Forums</i> .....	4-13
	4.3.9 <i>Advisory Committees</i> .....	4-13
<b>4.4</b>	<b>Analyzing Stakeholder Input</b> .....	4-13
<b>4.5</b>	<b>Implementation and Monitoring</b> .....	4-14
<b>4.6</b>	<b>Effective Coordination</b> .....	4-15
	4.6.1 <i>Develop a Project Charter</i> .....	4-16
	4.6.2 <i>Develop a Work Breakdown Structure</i> .....	4-16
	4.6.3 <i>Establish an Organizational Structure</i> .....	4-16
	4.6.4 <i>Establish Management Procedures</i> .....	4-16
<b>4.7</b>	<b>Maintaining an Administrative Record</b> .....	4-17
	4.7.1 <i>General Guidelines</i> .....	4-17
	4.7.2 <i>Documents That Should Be Included in the Administrative Record</i> .....	4-18
	4.7.3 <i>Other Documents That May Be Included in the Administrative Record</i> .....	4-19
	4.7.4 <i>Documents that Generally Should Not Be Included in the Administrative Record</i> .....	4-19

## **PHASE 2: Developing the HCP and Environmental Compliance Documents**

### **Chapter 5: Covered Activities and Alternatives to the Taking**

<b>5.1</b>	<b>Activities Covered by the Incidental Take Permit and HCP</b> .....	5-1
5.1.1	<i>Covered Activity Eligibility</i> .....	5-1
5.1.2	<i>HCP Measures that Result in Take</i> .....	5-1
5.1.3	<i>Including Effects from the Covered Activities</i> .....	5-2
<b>5.2</b>	<b>Types of Land and Water Use Activities Covered in HCPs</b> .....	5-2
<b>5.3</b>	<b>Analyzing the Components of Land and Water Use Activities</b> .....	5-3
<b>5.4</b>	<b>Excluding Certain Activities</b> .....	5-5
<b>5.5</b>	<b>Describing Covered Activities in the HCP</b> .....	5-5
<b>5.6</b>	<b>Alternative Actions to the Taking in the HCP</b> .....	5-6
<b>5.7</b>	<b>NEPA Alternatives</b> .....	5-6

### **Chapter 6: Identifying the Plan Area, Permit Area, and Other Areas Analyzed**

<b>6.1</b>	<b>Determining the Plan Area</b> .....	6-1
6.1.1	<i>What is the Plan Area?</i> .....	6-1
6.1.2	<i>Plan Area Size Considerations</i> .....	6-2
6.1.3	<i>Plan Area Units</i> .....	6-3
<b>6.2</b>	<b>Determining the Permit Area</b> .....	6-3
<b>6.3</b>	<b>Areas Analyzed Under Various Legal Authorities</b> .....	6-3
6.3.1	<i>Section 10</i> .....	6-4
6.3.2	<i>Section 7</i> .....	6-4
6.3.3	<i>NEPA</i> .....	6-5
6.3.4	<i>NHPA</i> .....	6-5
<b>6.4</b>	<b>Maps and Data Needs</b> .....	6-6
6.4.1	<i>Maps and Analyses</i> .....	6-6
6.4.2	<i>Metadata and Data Documentation</i> .....	6-6
6.4.3	<i>Data Management and Sharing Plans</i> .....	6-7

### **Chapter 7: Identifying HCP Species and Information Needs**

<b>7.0</b>	<b>Introduction</b> .....	7-1
<b>7.1</b>	<b>Requirements and Information Needs and Standards for “Covered” Species</b> .....	7-4
<b>7.2</b>	<b>Selecting Covered Species</b> .....	7-5
<b>7.3</b>	<b>Addressing Non-Listed Species in the HCP</b> .....	7-6
<b>7.4</b>	<b>Special Considerations for Some Species Groups</b> .....	7-7
7.4.1	<i>Migratory Birds</i> .....	7-7
7.4.2	<i>Bald and Golden Eagles</i> .....	7-7
7.4.3	<i>Anadromous Fish</i> .....	7-9
7.4.4	<i>Sea Turtles</i> .....	7-9

7.4.5	<i>Marine Mammals</i> .....	7-10
	7.4.5.1 Marine Mammal Protection Act: Incidental Harrassment Authorization .....	7-11
	7.4.5.2 Marine Mammal Protection Act: Letters of Authorization .....	7-11
7.4.6	<i>Plants</i> .....	7-13
7.4.7	<i>State Protected Species</i> .....	7-14
7.4.8	<i>HCPs and Enhancement of Survival Permits</i> .....	7-14
<b>7.5</b>	<b>Addressing Critical Habitat</b> .....	7-15
	7.5.1 <i>Effect of Critical Habitat on HCPs</i> .....	7-15
	7.5.2 <i>Critical Habitat Exclusions</i> .....	7-16
<b>7.6</b>	<b>Identifying the Role of the Plan Area in the Conservation of each Covered Species</b> .....	7-16
<b>7.7</b>	<b>Tools</b> .....	7-18
	7.7.1 <i>Climate Change Effects Analysis</i> .....	7-18
	7.7.2 <i>Conceptual Models</i> .....	7-19
	7.7.3 <i>Decision Support Models</i> .....	7-19
	7.7.4 <i>Effects Pathway Model</i> .....	7-19
	7.7.5 <i>Geographic Information System</i> .....	7-19
	7.7.6 <i>Habitat Equivalency Analysis</i> .....	7-20
	7.7.7 <i>Population Viability Analysis</i> .....	7-20
	7.7.8 <i>Reserve Design Optimization Models</i> .....	7-20
	7.7.9 <i>Resource Equivalency Analysis</i> .....	7-21
	7.7.10 <i>Species Distribution Models</i> .....	7-21
	7.7.11 <i>Species Status Assessments</i> .....	7-21
	7.7.12 <i>Spreadsheet Population Models</i> .....	7-22
<b>7.8</b>	<b>Data Sharing</b> .....	7-22
	7.8.1 <i>FOIA and Proprietary Information</i> .....	7-22

## Chapter 8: Calculating Take from Land and Water Use Activities

<b>8.1</b>	<b>Analysis of Take from Proposed Land and Water Use Activities</b> .....	8-1
<b>8.2</b>	<b>Determining Take</b> .....	8-1
	8.2.1 <i>Sources and Types of Take</i> .....	8-1
	8.2.2 <i>Units of Take</i> .....	8-3
	8.2.3 <i>Quantity of Take</i> .....	8-5
	8.2.4 <i>Take That May Be Accounted For in Another Permitting Process</i> .....	8-5
<b>8.3</b>	<b>Describe the Impact That Will Result From Such Taking</b> .....	8-6
<b>8.4</b>	<b>Section 7 Tasks</b> .....	8-7

## Chapter 9: HCP Conservation Strategy

<b>9.0</b>	<b>Introduction</b> .....	9-2
<b>9.1</b>	<b>Biological Goals</b> .....	9-4
	9.1.1 <i>How to Develop Useful Goals</i> .....	9-7
	9.1.1.1 <i>Habitat-Based Goals vs. Species-Based Goals</i> .....	9-8
	9.1.2 <i>Responsibility for Developing Biological Goals and Objectives</i> .....	9-9

9.1.3	<i>When to Develop Goals and Objectives</i> .....	9-10
9.1.4	<i>Number of Biological Goals</i> .....	9-10
<b>9.2</b>	<b>Biological Objectives</b> .....	9-10
9.2.1	<i>SMART</i> .....	9-10
9.2.2	<i>Considering Climate Change Effects in the Development of Goals and Objectives</i> .....	9-12
<b>9.3</b>	<b>Conservation Measures</b> .....	9-12
9.3.1	<i>Avoidance Measures</i> .....	9-13
9.3.2	<i>Minimization Measures</i> .....	9-13
9.3.3	<i>Mitigation Measures</i> .....	9-14
9.3.3.1	<i>Restoration of Degraded Habitat</i> .....	9-15
9.3.3.2	<i>Land Preservation</i> .....	9-15
9.3.3.3	<i>Creation of New Habitat</i> .....	9-16
9.3.3.4	<i>Habitat Enhancement</i> .....	9-17
9.3.3.5	<i>Threat Reduction or Elimination</i> .....	9-17
9.3.3.6	<i>Translocation</i> .....	9-17
9.3.3.7	<i>Repatriation</i> .....	9-17
9.3.4	<i>Putting Goals, Objectives, and Measures Together</i> .....	9-17
9.3.5	<i>How Much Minimization Compared to Mitigation?</i> .....	9-19
<b>9.4</b>	<b>Mitigation Implementation</b> .....	9-19
9.4.1	<i>Permittee Implemented Mitigation</i> .....	9-19
9.4.2	<i>Conservation Banks</i> .....	9-20
9.4.3	<i>In-Lieu-Fee Mitigation</i> .....	9-22
9.4.4	<i>Dealing with Uncertainty in Goals, Objectives, and Measures</i> .....	9-23
9.4.5	<i>Determining Location for Mitigation</i> .....	9-24
9.4.6	<i>Planning for Inflation</i> .....	9-25
9.4.7	<i>Conservation Design</i> .....	9-25
9.4.8	<i>Permittee Responsibilities: Meeting Goals and Objectives, or Specific Actions in the HCP</i> .....	9-27
9.4.9	<i>Timing of Mitigation</i> .....	9-27
9.4.10	<i>Mitigation and ‘Stay ahead’ Provisions</i> .....	9-28
<b>9.5</b>	<b>The Maximum Extent Practicable Standard</b> .....	9-28
9.5.1	<i>How to Demonstrate Fully Offset</i> .....	9-29
9.5.2	<i>Demonstrating Additional Minimization and Mitigation Measures Are Not Practicable</i> .....	9-33
9.5.3	<i>The Burden of Proving Maximum Extent Practicable</i> .....	9-34
9.5.4	<i>Services Conduct an Independent Analysis of Practicability</i> .....	9-35
9.5.5	<i>Services Demonstration of Maximum Extent Practicable</i> .....	9-35
<b>9.6</b>	<b>Providing for Changed Circumstances</b> .....	9-38
9.6.1	<i>Changed Circumstances</i> .....	9-38
9.6.2	<i>Unforeseen Circumstances</i> .....	9-39
9.6.3	<i>Steps to Identify and Plan for Changed and Unforeseen Circumstances</i> .....	9-41
9.6.4	<i>Differentiating Between a Changed and an Unforeseen Circumstance</i> .....	9-41
9.6.5	<i>Determining Changed vs. Unforeseen Circumstances</i> .....	9-44

9.6.6	<i>NEPA and Changed Circumstances</i> .....	9-44
9.6.7	<i>Considering Climate Change Effects in Changed Circumstances</i> .....	9-44
9.6.8	<i>Timing of Changed Circumstances</i> .....	9-46
9.6.9	<i>Information Needs for Changed and Unforeseen Circumstances</i> .....	9-46
9.6.10	<i>No Surprises and Changed Circumstances</i> .....	9-46
<b>9.7</b>	<b>Considering Climate Change</b> .....	9-47

## **Chapter 10: Monitoring and Adaptive Management**

<b>10.0</b>	<b>Introduction</b> .....	10-1
	<i>10.0.1 Roles and Requirements for HCP Monitoring Programs</i> .....	10-2
<b>10.1</b>	<b>Monitoring</b> .....	10-3
	<i>10.1.1 Monitoring for Baseline Information</i> .....	10-4
	<i>10.1.2 Effectiveness Monitoring to Support Ongoing Conservation Decisions</i> .....	10-4
	<i>10.1.2.1 Development of Competing Hypotheses and Conceptual Models</i> .....	10-5
	<i>10.1.3 Reporting Compliance with Permit Terms and Conditions</i> .....	10-12
<b>10.2</b>	<b>Steps to Developing a Monitoring Program</b> .....	10-12
	<i>10.2.1 Frame the Problem</i> .....	10-14
	<i>10.2.2 Design the Monitoring</i> .....	10-14
	<i>10.2.3 Implement the Conservation Program and Learn</i> .....	10-19
	<i>10.2.4 Changes to the Monitoring Program</i> .....	10-19
<b>10.3</b>	<b>Evaluation</b> .....	10-20
	<i>10.3.1 Dealing with Uncertainty in the Evaluation Process</i> .....	10-21
<b>10.4</b>	<b>Reporting and Compliance Evaluation</b> .....	10-22
	<i>10.4.1 Data Sharing</i> .....	10-23
	<i>10.4.2 Technology and Reporting</i> .....	10-25
	<i>10.4.3 Outputs from Monitoring and Evaluation in Annual Reports</i> .....	10-26
	<i>10.4.4 Evaluating HCP Compliance</i> .....	10-27
<b>10.5</b>	<b>Adaptive Management</b> .....	10-27
	<i>10.5.1 How to Incorporate Adaptive Management into an HCP</i> .....	10-30
	<i>10.5.2 Uncertainty in Management Decisions</i> .....	10-32
	<i>10.5.2.1 Accounting for Uncertainty</i> .....	10-32
	<i>10.5.3 Oversight Committees</i> .....	10-34

## **Chapter 11: Implementation Costs and Funding**

<b>11.0</b>	<b>Introduction</b> .....	11-1
<b>11.1</b>	<b>Implementation Costs</b> .....	11-2
	<i>11.1.1 Estimating Costs</i> .....	11-2
	<i>11.1.2 Preserve Management Costs</i> .....	11-5
	<i>11.1.3 Adjusting Funding</i> .....	11-5
	<i>11.1.4 When a Mitigation Project Doesn't Perform as Proposed</i> .....	11-5
<b>11.2</b>	<b>Funding Sources</b> .....	11-6
<b>11.3</b>	<b>Funding Assurances</b> .....	11-9

11.3.1	<i>Examples of Plan Types and Funding Assurance Approaches That May Apply</i> .....	11-10
11.3.2	<i>Categories of HCP Implementation Costs</i> .....	11-12
11.3.2.1	<i>The Effect of Stay-Ahead Provisions on Funding Assurances</i> .....	11-15
11.3.3	<i>Types of Funding Assurances</i> .....	11-15
11.3.3.1	<i>Determining Adequate Funding Assurances for a Specific Project</i> .....	11-23
11.3.4	<i>Third Party Beneficiaries</i> .....	11-24
11.3.4.1	<i>Third-Party Beneficiary Structure</i> .....	11-24
11.3.4.2	<i>Collecting Funds</i> .....	11-24
11.3.5	<i>Putting it All Together</i> .....	11-24

## Chapter 12: Net Effects and Permit Duration

12.0	<b>Introduction</b> .....	12-1
12.1	<b>Determine the Anticipated Type and Amount of Take</b> .....	12-2
12.2	<b>Describe the Impacts of the Taking</b> .....	12-3
12.3	<b>Describe the Expected Benefits of the Conservation Program</b> .....	12-3
12.4	<b>Determine the Net Effects to Covered Species and Critical Habitat</b> .....	12-4
12.5	<b>Effects Analysis and Permit Issuance Criteria</b> .....	12-4
12.6	<b>Comparison of HCP Impact of Take Analysis with Section 7 Analysis of Effects</b> .....	12-6
12.6.1	<i>Impacts to Covered Species</i> .....	12-6
12.6.2	<i>Impacts to Critical Habitat</i> .....	12-6
12.7	<b>Comparison of HCP Impact of Take Analysis with NEPA Analysis of Effects</b> .....	12-7
12.8	<b>Comparison of NHPA Section 106 Process and NEPA Analysis of Effects</b> .....	12-8
12.9	<b>Permit Duration Considerations</b> .....	12-8
12.9.1	<i>Duration of Activities Covered</i> .....	12-8
12.9.2	<i>Determining if There is Enough Available Information</i> .....	12-9
12.9.3	<i>The Extent to Which the Conservation Plan Will Enhance the Habitat and Increase the Long-Term Survivability of Covered Species</i> .....	12-9
12.9.4	<i>How Well the Monitoring and Adaptive Management Program Addresses Uncertainty</i> .....	12-9
12.9.5	<i>Whether the Funding Strategy for the Conservation Program Is Adequate for the Proposed Duration of the Permit</i> .....	12-10
12.9.6	<i>Permit Duration Decision</i> .....	12-10

## Chapter 13: National Environmental Policy Act Compliance

13.0	<b>Introduction</b> .....	13-1
13.1	<b>Purpose and Need</b> .....	13-1



13.1.1	<i>Template NEPA Purpose Statement for Incidental Take Permit Applications</i> .....	13-2
13.1.2	<i>Template NEPA Need Statement for Incidental Take Permit Applications</i> .....	13-3
<b>13.2</b>	<b>Proposed Action</b> .....	13-3
13.2.1	<i>Template Proposed Action Statement for Incidental Take Permit Applications</i> .....	13-5
<b>13.3</b>	<b>Scope and Alternatives</b> .....	13-5
13.3.1	<i>Scope</i> .....	13-6
13.3.2	<i>Alternatives</i> .....	13-6
	13.3.2.1 <i>No-Action</i> .....	13-7
	13.3.2.2 <i>Proposed Action</i> .....	13-8
	13.3.2.3 <i>Additional Alternatives</i> .....	13-8
<b>13.4</b>	<b>Public Participation</b> .....	13-9
13.4.1	<i>Public Participation Requirements</i> .....	13-9
13.4.2	<i>Let Interested Parties Know about the Application’s Comment Period</i> .....	13-9
13.4.3	<i>Incorporating Public Participation During the Development of an HCP</i> .....	13-9
13.4.4	<i>Considering Tribal Interests in an HCP</i> .....	13-10
<b>13.5</b>	<b>Levels of NEPA Review</b> .....	13-10
13.5.1	<i>Categorical Exclusion</i> .....	13-10
13.5.2	<i>Environmental Assessment</i> .....	13-12
13.5.3	<i>Environmental Impact Statement</i> .....	13-13
<b>13.6</b>	<b>Preparation of NEPA Document by Consultants</b> .....	13-14

<p><b>PHASE 3: Processing, Making a Permitting Decision, and Issuing the Incidental Take Permit</b></p>
---

**Chapter 14: Completing and Reviewing the Permit Application and NEPA Compliance Documents**

<b>14.0</b>	<b>Introduction</b> .....	14-2
<b>14.1</b>	<b>Documents Required to Complete the Application</b> .....	14-2
<b>14.2</b>	<b>Permit Application Forms, Application Fees, and Instructions</b> .....	14-4
	14.2.1 <i>FWS Application Form</i> .....	14-4
	14.2.2 <i>NMFS Applications</i> .....	14-5
	14.2.3 <i>Incomplete or Insufficient Application</i> .....	14-5
	14.2.4 <i>FWS Application Processing Fee</i> .....	14-5
<b>14.3</b>	<b>Field Office Review of the HCP</b> .....	14-6
	14.3.1 <i>ESA Requirements</i> .....	14-8
	14.3.2 <i>Issuance Criteria</i> .....	14-9
	14.3.3 <i>Disqualifying Factors</i> .....	14-9
	14.3.4 <i>Incomplete or Inadequate HCP</i> .....	14-10

14.3.5	<i>Certification of Application by the Field Office that the HCP is Statutorily Complete</i> .....	14-11
<b>14.4</b>	<b>Field Office Review of the NEPA Analysis</b> .....	14-11
<b>14.5</b>	<b>Federal Register Notices</b> .....	14-13
14.5.1	<i>Purpose</i> .....	14-13
14.5.2	<i>Timing of the Notice</i> .....	14-13
14.5.3	<i>Composition and Content of Federal Register Notices</i> .....	14-13
14.5.4	<i>Format of the Notice of Availability</i> .....	14-14
<b>14.6</b>	<b>Required Public Comment Periods</b> .....	14-14
<b>14.7</b>	<b>Review by Regional Office and Legal Counsel</b> .....	14-14
14.7.1	<i>Regional Office Application Processing</i> .....	14-14
14.7.2	<i>Review by Office of the Regional Solicitor and General Counsel</i> .....	14-15
<b>14.8</b>	<b>Getting Federal Register Notices Signed and Published</b> .....	14-18
14.8.1	<i>FWS Procedures for Federal Register Notices</i> .....	14-18
14.8.2	<i>NMFS Procedures for Federal Register Notices – Headquarters</i> .....	14-20
<b>14.9</b>	<b>The Freedom of Information Act and the Privacy Act</b> .....	14-20
14.9.1	<i>The Freedom of Information Act (5 U.S.C. § 552)</i> .....	14-20
14.9.2	<i>The Privacy Act of 1974 (5 U.S.C. § 552a)</i> .....	14-21
<b>14.10</b>	<b>Tracking Databases</b> .....	14-22
14.10.1	<i>FWS Databases</i> .....	14-22
14.10.2	<i>NMFS Databases</i> .....	14-22
<b>14.11</b>	<b>Implementing Agreements</b> .....	14-23
<b>14.12</b>	<b>Services’ Tasks During the Public Comment Period</b> .....	14-24
14.12.1	<i>Compliance with Section 7</i> .....	14-24
14.12.2	<i>Drafting the HCP-Specific Biological Opinion – Format</i> .....	14-26
14.12.3	<i>FWS Intra-Service Consultation</i> .....	14-29
14.12.4	<i>NMFS Intra-Service Consultation</i> .....	14-29
14.12.5	<i>Inter-Agency Consultation Between the Services</i> .....	14-30
14.12.6	<i>Integrating the Section 7 Compliance Process with Development of an HCP</i> .....	14-30
14.12.7	<i>Integrating HCPs and Federal Actions</i> .....	14-31
14.12.8	<i>Drafting the Findings and Recommendations Memo</i> .....	14-32
14.12.9	<i>Drafting the NEPA Decision Document</i> .....	14-32

## **Chapter 15: Finalizing the HCP and Environmental Compliance Documents**

<b>15.1</b>	<b>Reviewing and Responding to Public Comments</b> .....	15-1
15.1.1	<i>Comments on the HCP</i> .....	15-2
15.1.2	<i>Comments on the NEPA Analysis</i> .....	15-4
15.1.3	<i>No Comments Received</i> .....	15-4
15.1.4	<i>Controversy</i> .....	15-4
15.1.4.1	<i>Public Objection</i> .....	15-4
15.1.4.2	<i>Scientific Controversy</i> .....	15-4
<b>15.2</b>	<b>Finalizing the HCP and NEPA Analysis</b> .....	15-5
15.2.1	<i>FWS Final Review</i> .....	15-5
15.2.2	<i>NMFS Final Review</i> .....	15-5

<b>15.3</b>	<b>Completing the Section 7 Biological and Conference Opinion</b> .....	15-5
	15.3.1 <i>Relationship Between the Incidental Take Permit and the Incidental                     Take Statement</i> .....	15-6
	15.3.2 <i>Conferencing on Potential ESA-Listed Species (Proposed,                     Candidate, or Unlisted Species)</i> .....	15-6
	15.3.3 <i>Including Plants</i> .....	15-7
<b>15.4</b>	<b>Completion of National Historic Preservation Act Section 106 Requirements</b> .....	15-7
<b>15.5</b>	<b>NEPA Decision Documents</b> .....	15-7
	15.5.1 <i>Environmental Action Statement</i> .....	15-8
	15.5.1.1 <i>When to Prepare an Environmental Action Statement</i> .....	15-8
	15.5.1.2 <i>Content of the Environmental Action Statement</i> .....	15-8
	15.5.1.3 <i>Processing the Environmental Action Statement</i> .....	15-9
	15.5.2 <i>Making the Decision on an Environmental Assessment</i> .....	15-9
	15.5.2.1 <i>Finding of No Significant Impact</i> .....	15-9
	15.5.2.2 <i>Content of the Finding of No Significant Impact</i> .....	15-10
	15.5.3 <i>Making the Decision on an Environmental Impact Statement</i> .....	15-10
	15.5.3.1 <i>Record of Decision Checklist</i> .....	15-11
	15.5.3.2 <i>Content of the Record of Decision</i> .....	15-11
	15.5.4 <i>Joint Federal-State Processes</i> .....	15-11

## **Chapter 16: Making a Permit Decision**

<b>16.1</b>	<b>Documenting Our Findings - Section 10 Findings and Recommendations Memorandum</b> .....	16-2
	16.1.1 <i>Introduction and Project Description</i> .....	16-2
	16.1.2 <i>Section 10(a)(2)(A) HCP Criteria – Analysis and Finding</i> .....	16-2
	16.1.3 <i>Permit Issuance Criteria – Analysis and Finding</i> .....	16-3
	16.1.3.1 <i>The taking will be incidental – section 10(a)(2)(B)(i)</i> .....	16-3
	16.1.3.2 <i>The applicant will, to the maximum extent practicable,                     minimize and mitigate the impacts of such taking –                     section 10(a)(2)(B)(ii)</i> .....	16-3
	16.1.3.3 <i>The applicant will ensure that adequate funding for the                     conservation plan and procedures to deal with unforeseen                     circumstances will be provided</i> .....	16-4
	16.1.3.4 <i>The taking will not appreciably reduce the likelihood of the                     survival and recovery of the species in the wild</i> .....	16-5
	16.1.3.5 <i>The measures, if any, required under paragraph                     (b)(1)(iii)(D) of this section will be met</i> .....	16-6
	16.1.3.6 <i>He or she has received such other assurances as he or she                     may require that the plan will be implemented</i> .....	16-6
	16.1.4 <i>Disqualifying Factors</i> .....	16-6
<b>16.2</b>	<b>Writing the Permit</b> .....	16-7
	16.2.1 <i>Permit Terms and Conditions</i> .....	16-8
	16.2.2 <i>Reporting Requirements</i> .....	16-12

<b>16.3</b>	<b>Federal Register Notice of Availability - Final HCP, Final NEPA Analysis, and Draft or Final Decision Documents</b> .....	16-12
<b>16.4</b>	<b>Preparing and Processing the Signature Package</b> .....	16-13
	16.4.1 <i>Contents of the Signature Package</i> .....	16-13
	16.4.2 <i>Who Signs the Documents and Why</i> .....	16-14
	16.4.2.1 FWS .....	16-14
	16.4.2.2 NMFS.....	16-14
	16.4.3 <i>Timing – When Documents are Signed</i> .....	16-14
	16.4.3.1 Environmental Action Statement and Permit .....	16-15
	16.4.3.2 Finding of No Significant Impact and Permit.....	16-15
	16.4.3.3 Record of Decision and Permit.....	16-16
<b>16.5</b>	<b>Implementing the HCP and Executing the NEPA Decision</b> .....	16-16
<b>16.6</b>	<b>Permit Issuance and Distribution of Copies of the Permit</b> .....	16-16
<b>16.7</b>	<b>Permit Denial, Review, and Appeal Procedures (Who Signs the Permit and Why)</b> .....	16-16
	16.7.1 <i>Permit Denial</i> .....	16-16
	16.7.2 <i>Request for Reconsideration of a Permit Denial</i> .....	16-17
	16.7.3 <i>Copies of Denials</i> .....	16-17
<b>16.8</b>	<b>SPITS, APPS, and ECOS</b> .....	16-17

<b>PHASE 4: Implementing the HCP and Compliance Monitoring</b>
--

## **Chapter 17: Implementing the HCP, Compliance Monitoring, and Making Changes, If Necessary**

<b>17.1</b>	<b>Implementation and Administration of the HCP</b> .....	17-1
<b>17.2</b>	<b>HCP Monitoring Program: Ensuring the Funding, Conservation Commitments, Mitigation, and All Other Aspects of the HCP Are Being Fulfilled; Review of Annual Reports</b> .....	17-2
	17.2.1 <i>Biological Effectiveness Monitoring</i> .....	17-2
	17.2.2 <i>Incidental Take Permit Compliance Monitoring</i> .....	17-3
<b>17.3</b>	<b>Adaptive Management, Changed Circumstances, and No Surprises in Practice</b> .....	17-4
<b>17.4</b>	<b>Permit Amendments, Renewals, Transferals</b> .....	17-5
	17.4.1 <i>Changes to HCP Implementation</i> .....	17-6
	17.4.1.1 Interpretations, Corrections, Clarifications, or Missing Details .....	17-6
	17.4.1.2 HCP and Incidental Take Permit Amendments .....	17-6
	17.4.2 <i>Renewals</i> .....	17-8
	17.4.3 <i>Permit Transfers</i> .....	17-8
<b>17.5</b>	<b>When Additional NEPA, Section 7, or NHPA Compliance is Needed</b> .....	17-10
<b>17.6</b>	<b>Permit Compliance Problems, Notifying Law Enforcement, Suspensions, and Revocations</b> .....	17-10
	17.6.1 <i>Permit Suspension and Revocation</i> .....	17-11

17.6.2 *Summary of FWS Suspension and Revocation Process Step by Step* .. 17-13  
17.6.3 *Summary of NMFS Suspension and Revocation Process* ..... 17-13  
**17.7 Permit Abandonment or Relinquishment** ..... 17-14

**Appendices**

Appendix A: National Historic Preservation Act (NHPA) Compliance and Habitat  
Conservation Plans (HCP) for the U.S. Fish and Wildlife Service ..... A-1  
Appendix B: Special Considerations for Including Use of Pesticides in Habitat  
Conservation Plans.....B-1  
Appendix C: Required Habitat Conservation Plan (HCP) Elements and  
Recommended HCP Outline.....C-1

**Glossary**

**Literature Cited**